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JAMES R. BROWNING, Cle

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 340

J. VIRGIL SCOTT, ET AL AND PAUL J. ROGERS, ET AL,
Petitioners,

v.

UNION PRODUCING COMPANY, ET AL,
Respondents.

PETITIONERS' REPLY TO RESPONDENTS' SUPPLEMENTAL REPLY

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SORG PRINTING COMPANY OF TEXAS, HOUSTON, TEXAS

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May It Please The Court:

Petitioners respectfully request leave of this Honorable Court to file a brief argument in response to Respondents' supplemental reply brief.

Initially Petitioners wish to point out that the ground urged in the supplemental reply was also argued at length in the first reply. Thus, nothing new or novel is suggested. Respondents' only point in their supplemental reply is that in the case of *Gulf Oil Corporation* v. *Reid*, the Supreme Court of Texas has held for the third time that *leases* expire under the term of the *particular shut-in royalty clauses* there involved unless the payment of shut-in royalties is made before the end of the primary term of the leases.

Petitioners respectfully submit that the point of law established by the Texas Supreme Court in the three cases

cited by Respondents is clearly inapplicable to the case at bar. The shut-in royalty clauses were virtually identical in all three cases, and this Honorable Court will observe that in both of the two later cases following *Freeman* v. *Magnolia Petroleum Co.*, 141 Tex. 274, 171 S.W. 2d 339, the Texas Supreme Court has very carefully limited its holdings to the terms of *"this"* shut-in royalty clause. On the other hand, the lease provision in this case expressly permits the payment of shut-in royalties at the end of each quarter. Such payments were made (R. 125, 129, 183). The Texas Courts have held that where the lease provision expressly defines the period of time within which the royalties may be paid, as in this case, payment within that period although after the end of the primary term extends the lease. *Union Oil Co. of California* v. *Ogden*, 278 S.W. 2d 246 (Tex. Civ. App. err, refd. n.r.e.).

While the *Ogden* case is a complete answer to the cases cited by Respondents, Petitioners' basic position is that by modification, the lease provision on shut-in payments is read into and became a part of the term interest grants. This is the question squarely presented to the Supreme Court of Texas in *Archer County* v. *Webb*, which is pending on the docket of that Court. If the lease provision is read into the term deeds, all of it *including the time of payment* will become a part thereof.

As Respondents point out, neither the trial court nor the Court of Appeals for the Fifth Circuit passed upon the ground raised in the supplemental reply. Petitioners respectfully suggest that this petition for writ of certiorari should not be denied on a question of local law not considered by the lower courts.

The Supreme Court of Texas has granted a writ of error in *Archer County* v. *Webb*, as we had previously advised the Court. The case was submitted on oral argument on February 17, 1960, and is being considered by that Court

at this time. Petitioners again request that final determination of this cause be deferred until the Supreme Court of Texas has handed down its decision in *Archer County* v. *Webb*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this ..... day of May, 1960, copies of the foregoing reply were served upon all counsel of record for respondents herein, and upon Mr. W. S. Stovall.

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